

**A Petition to halt all action on the Cherry Creek Mines Superfund Project
Notice of intent to file a Civil Lawsuit against Prescott National Forest
Supervisor Dale A. Deiter et al.**

FILED
DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

SEP 13 2021

As a resident of Yavapai County Arizona and someone who enters into and uses National Forest Land on a regular basis I oppose this project because the US Forest Service has knowingly created and presented to the public a grossly misleading, falsified Document.

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The Cherry Creek Mines project (CCM) is a proposal to cleanup 6 abandoned mines within the Prescott National Forest (PNF) in Yavapai County, Arizona.

This project has developed a Draft Final, Engineering Evaluation/Cost Analysis (EE/CA) document dated November 2017 https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd859781.pdf (export to PDF for bookmarks) The PNF has posted this EE/CA for a public review and comment period that ends on January 30, 2021 This petition is presented in a timely manner.

The EE/CA is dated November 2017. It was posted for public review in the Prescott eNews on December 8, 2020. That timing is just slightly over 3 years. A Statute of Limitations for a 42 USC section 1983/Bivens lawsuit is 3 years. The timing is obvious and the attempt to create shelter is clear. This is testimony to the fact that the US Forest Service knew it was presenting a falsified document to the public.

I have spent countless hours studying and comparing this EE/CA and all available reference material. I have made numerous visits to the 6 individual mines, searching for features and indications of water sources. I have taken many photos and videos. After careful review of all such evidence, I have concluded the following.

The authors of the EE/AC intentionally misrepresented the actual conditions at the mine sites, in diagrams and written descriptions. The authors also omitted and intentionally manipulated listed authoritative research materials, all in an effort to deceive the public as to the actual condition of the mines of this project.

The US Forest Service (USFS) is hiding the fact that the mines in this project have extensive and deep shafts and workings that are close to, if not into, Yavapai Counties ground water system.

The USFS is hiding the fact that several of the mines in this project are completely flooded, to include the 600 foot deep mine shaft #2 of the Logan mine. The EE/CA now refers to this as a mere 50 foot deep shaft.

At each of the 6 abandoned mine sites, the USFS plans to conduct the suggested, option #3 in the EE/CA This option calls for the filling of every deep flooded shaft or mine opening with thousands of tones of toxic contaminated waste rock found at each mine site. This is in complete violation of the Environmental Protection Agencies and the Clean Water Act rules and guidelines for abandon mine land cleanup.

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Any mine system that is even partially flooded must be handled in a special and time consuming manner. The rising and lowering of seasonal water levels must be considered. See: EPA '*Abandoned Mine Characterization and Cleanup Handbook*'
<https://semspub.epa.gov/work/HQ/174437.pdf>

The USFS carefully crafted the EE/CA to hide any evidence of the need to adhere to this critical environmental protocol that requires special handling of deep and flooded mine systems. The USFS has chosen a reckless, fast and easy approach to bury any evidence of mining at these sites. It is obvious that the USFS does not care about Yavapai Counties precious water supply.

The USFS is also aware that soil sampling and historical documentation in the EE/CA shows that each of the 6 mines waste rock piles contain several 'listed' Critical Minerals. In defiance of Presidential Executive Orders, the USFS has made no attempt to consider such a potentially valuable resource even though our Country is in a declared Critical Mineral National Emergency. The USFS is obsessed with stopping all mining on Forest Land even if it is a modern and safe operation with a fully bonded reclamation plan.

The 6 abandoned mines are:

The **Bunker Mine**
The **Golden Idol Mine**
The **Black Hawk Mine**
The **Golden Eagle Mine**
The **Uncle Sam / Black Chief Copper Mine**
The **Logan Mine**

Some of the Falsifications are:

Logan Mine Here, I have discovered that the EE/CA authors never mention the fact that the entire workings of this 600 foot deep mine are completely flooded.

Even though they refer to the authoritative resource document known as Paper 308 of 1958 by Lehner/Anderson in the Bunker mine site history, they intentionally leave it out of the Logan Mine site history. Page 176 of paper 308 describes the Logan as:
'*An inclined shaft on the vein is 600 feet deep.....The shaft was filled with water in 1951 to within 50 feet of the surface*'

The EE/CA authors claim that they never actually measured the depths of any shafts, just 'estimated' what they are. Of all the depths they could have *estimated* for this main shaft #2 at the Logan, they just happened to pick 50 feet.

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That 50 foot number, referenced above, is only found in Lehner/Anderson, a document, not acknowledged here. It should be noted that instead of referring to the authoritative Lehner/Anderson paper 308 at the Logan Mine, they referred to some company named PMR Exploration, LLC.

There is another very important Logan document hidden from the public, a 1943 map.

At 1.1.6.1 pg. 9 in the EE/CA you see: *Logan Mine MRDS ID #M002772*. Google this and find <https://www.mindat.org/loc-51333.html> All reputable references are shown, including Anderson/Lehner, paper 308 pg.176. Also listed is the *Arizona Dept. of Mineral Resources*.

In the EE/CA at 8.0 pg.127 'References' is the AZ Geologic Survey Site AZGS. Go to this *Arizona Geological Survey Mining Data* site.

<https://minedata.azgs.arizona.edu/content/azgs-mining-collections>

Here, search 'Logan' then scroll down to the 10th file named ***Logan Mine Area, Geologic Map.***

Once opened, you will have an extremely detailed map of the Logan Mine area, dated October 1943. It took me less than 2 minutes to find this 1943 map. The USFS had to know this map existed but chose to hide its extremely relevant information from the public. The Logan site history resource, PMR Exploration LLC, actually refers to a Logan map as coming from the Arizona Geological Survey site: '*Gold Leaf-Logan-Big Chief Geologic cross section of Logan areaportion of Cherry Creek Mining District (AZGS) files*'. Conveniently, they did not find this 1943 map.

Zoom into the actual Logan Mine area on the 1943 map.

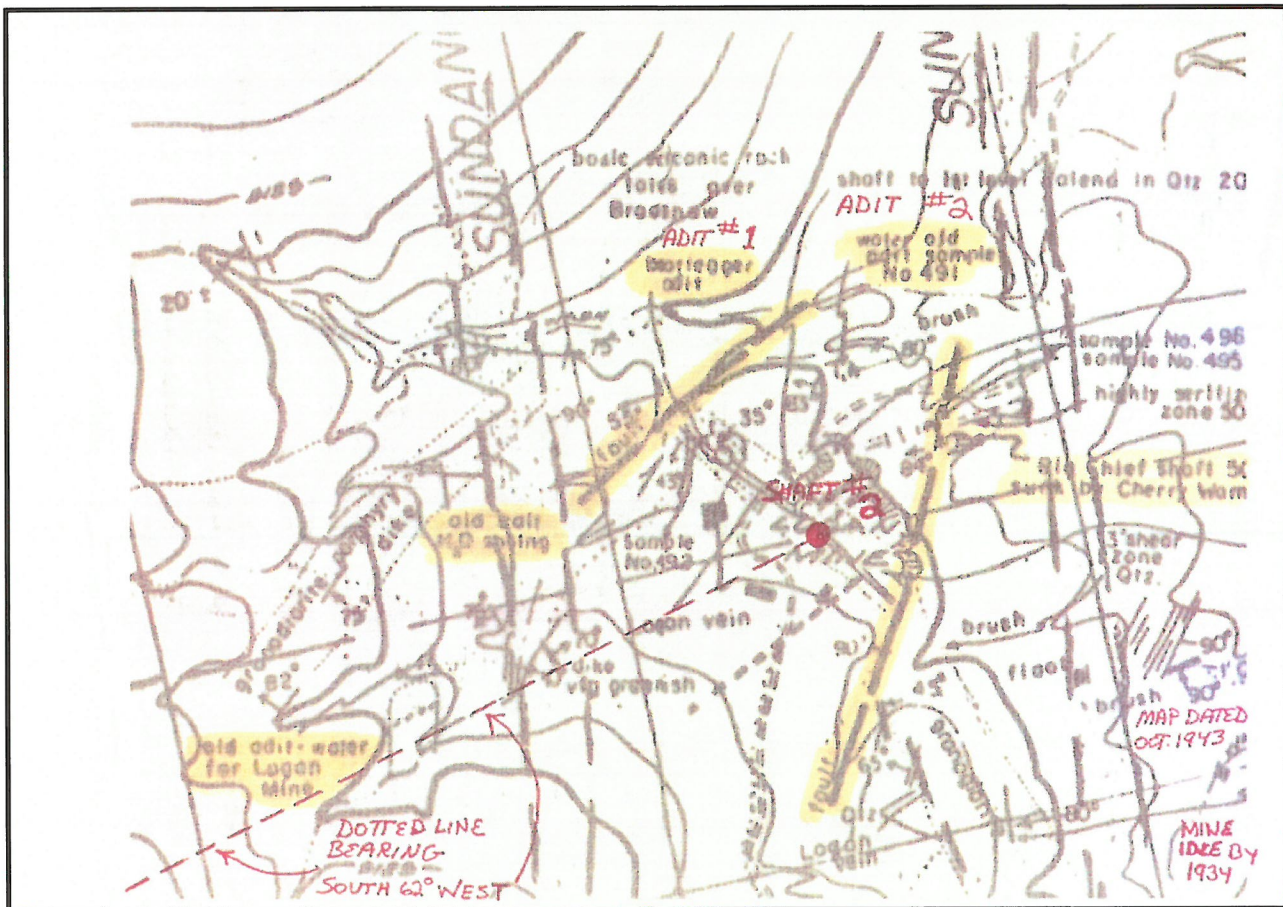
Presented below is my marked up copy of the actual mine site showing multiple water features that prove the Logan Mine is flooded.

The red dot is the 600 foot shaft known as shaft #2. On your own downloaded map, look to the right of this shaft to see its description. The shaft inclines south 62 degrees west to a depth of 600 feet. I have plotted this bearing and it places the shaft directly under a feature labeled '*old adit-water for Logan Mine*' meaning, water for the mill. I have discovered that a significant amount of water is flowing out of this feature and several large, abandoned livestock watering troughs are in place. Abandoned sources of water in Arizona are a good indication that the water is already contaminated.

At 3.4.6 on pg. 37 of the EE/CA, we see: '*water was not anticipated....nor required by contract*'. A preliminary inspection known as a PA/SI was conducted in 2015. Did they find the water sources in this project that I so easily found? If so, why did the people who later created the EE/CA in 2017 not know about it? Someone needs to answer for this.

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On the 1943 map, just northeast of the 1st old adit is 'old adit H₂O spring' I have also confirmed the locations of adit #1 & #2. Note that this old map labels adit #2 as, 'water old adit' To this day, water is flowing from the lower section of adit #2. The EE/CA photo #191 dated 4/4/2017 shows a pool of water in the lower right side. Photo # 192 showed a stream of water flowing from that pool. Note the descriptions and compare it to photos #172 & 173 of the Uncle Sam Mine. The USFS will not describe or acknowledge the water at the Logan Mine, even though it is undoubtedly flooded.



Marked up 1943 map

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Sadly, there are two dark lines near the 600 foot shaft collar, labeled, **Fault**. Deep cracks in the earth that can act as conduits to allow contaminated water into Yavapai Counties Ground Water System. This is the last thing the USFS wanted anyone to see.

The USFS plans to quickly and conveniently hide all waste rock at this site and the other 5 sites. They are recklessly planning to dump tons of contaminated material back down into this 600 foot deep shaft. How could they be so careless.

Even if the waters within the Logan Mine are acutely contaminated, it will be caused by some residual minerals left behind. Most of the main ore deposit that contained the harmful contaminants has already been mined out. The EPA has a protocol for neutralizing these mine waters and that protocol does not include simply dumping tons of contaminated waste rock back down into the flooded mine shaft.

Only surface soil samples were taken. At depth they will surely encounter higher concentrations. The sulfides near the surface have broken down creating sulfuric acid. This washes down over the years and a *leaching enrichment effect* happens. They don't even know how toxic the waste rock below the surface actually is.

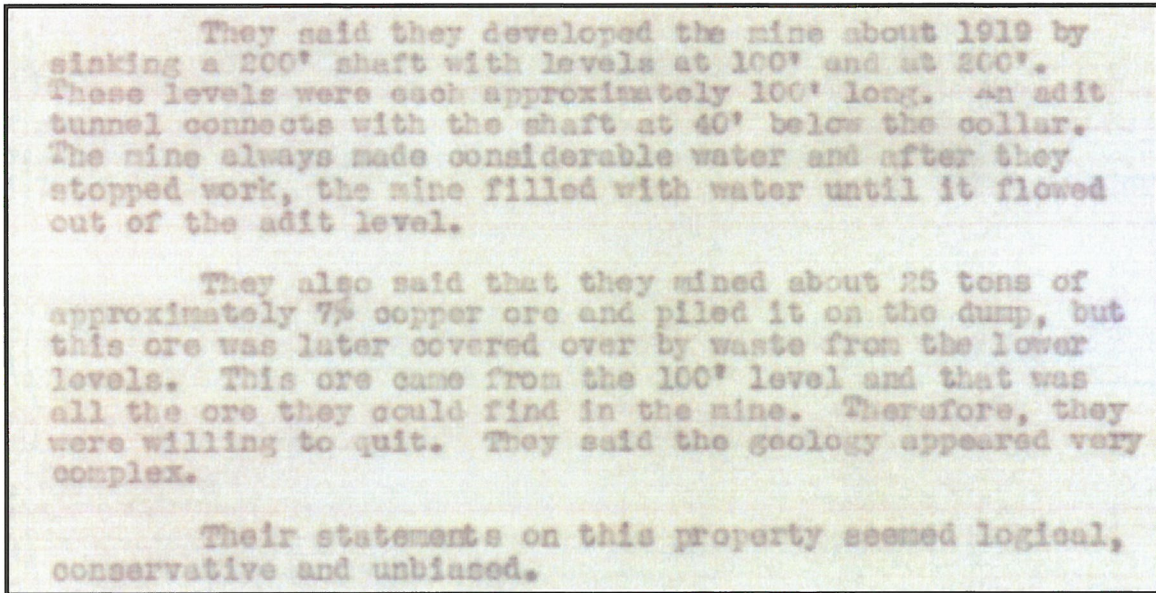
The EE/CA notes shaft #1 & shaft #2 at the Logan Mine, and they are the same ones depicted on the 1973 USGS Topo map. A third *collapsed* shaft is also mentioned near some trenches. This is a pit that looks identical to many other pits noted in this CCM project. Except for this Logan Mine pit, all of the others are called *prospects*. On the 1943 map, look to the east of the red dot to see *Big Chief Shaft 50' deep*. By reading this 1943 map the authors of this EE/CA confirmed this was a shaft and not a prospect

In figure #10 of the EE/CA, it describes a very large area at the Logan Mine as a '*disturbed area*'. I have discovered that this entire area is a massive body of mine waste rock. The USFS is now claiming that the main haulage shaft #2 is only 50 feet deep and not the true, 600 feet deep. They needed to conceal this massive waste rock pile that is solid evidence of just how deep and extensive this mine system actual is.

Uncle Sam / Black Chief Copper Mine Here, I discovered another deception. The EE/CA gives us very little site history. It does give us the MRDS ID # M002646. By Googling this ID we again find mindat <https://www.mindat.org/loc-134464.html>. Here we see that the Uncle Sam Mine is also known as the Black Chief Copper Mine. mindat also refers to the Arizona State Resource site. When we search for the '*Black Chief Copper*' in the *Arizona Geological Survey Mining Data* site we find this: <https://minedata.azgs.arizona.edu/report/black-chief-copper>. In here we find a 1943 letter that was hidden from the public.

The EE/CA states that the Uncle Sam mine shaft #1 is only '*40 feet deep with water at the bottom*'. From the letter we now know that it is 200 feet deep and flooded.

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Portion of 1943 letter

Just like the 50 foot depth at the Logan Mine, the USFS uses a 40 foot number that is only contained in a document they claim to have never discovered. This shaft is fenced off and inaccessible. As they stated, *'they estimated all mine shaft depths'*.

In figure 8 of the EE/CA we see a description of the surface area of the Uncle Sam Mine. Here, a *'Base Layer'* and *'Surface Feature'* are described. I have visited this site and discovered that no such separation of waste rock material is visible as described. This false description actually comes from the old letter above where it states *'ore was piled on the dump and later covered over'*, meaning layered. They read this 1943 letter.

On the only road to the Uncle Sam Mine, you pass directly in front of several abandoned livestock watering troughs with pipes leading up to adit #1. As noted, *'water sampling was not contracted'*

Black Hawk Mine Here, I discovered another deception. In the site history, they note that the mine had a 200 foot shaft that was filled with water. That is actually from the Anderson / Lehner paper 308 pg.176, that is not acknowledge here. The EE/CA states that they could not find this shaft. The so called prospect #1 (pit) at the Black Hawk Mine is actually this 200 foot flooded shaft. It simply has a covered, upper section, known as a false bottom. The massive pile of waste rock just outside of this so called prospect is testimony to the fact that it is the shaft. My visits confirmed that this waste rock has a consistent look and color and even matches the shafts side or *wall rock*.

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The authors needed a way to explain why so much waste rock was sitting just outside of a simple '5 foot deep prospect' They suggest that waste rock was brought down to that location from prospects at the larger Golden Idol Mine.

Unlike the Black Hawk, the Golden Idol had its own processing mill and the numerous prospects there still have all their waste rock remaining in place. So, why would miners transport valueless prospect waste rock from the Golden Idol Mine and place it outside of a mere prospect at the smaller Black Hawk Mine, clearly they would not.

Within moments of walking this site it was obvious to me that the so call prospect #1, with its massive pile of waste rock, is in fact, the 200 foot flooded shaft. Anyone viewing photos of this site will also come to this conclusion. For that reason, the only mine in the EE/CA that is missing photos is the Black Hawk Mine.

The USFS plans to reach into this shaft with a hydraulic excavator, remove the false bottom, and then fill the 200 foot flooded shaft with tons of contaminated waste rock.

BunkerMine Here I observed that prospect #1 is actually an *open* and deep adit. The site history refers to the Lehner paper 308 pg.175 where a '*Shear Zone*' is mentioned. Zones like this can also act as conduits to carry water into our ground water system.

Golden Idol Mine Here I observed that shaft #4 is not '*24 feet deep*'. It is actually the 375 to 400 foot deep shaft noted in the site history and Lehner, paper 308 pg. 175.

Golden Eagle Mine Here I observed that shaft #1 is not the stated, '*25 feet deep*'. Just toss a rock in there. I measured it and it is actually the 100 foot deep shaft mentioned in Lehner/ Anderson paper 308 pg.176 not referenced here. References here to Wilson 1934 are for another mine.

As mentioned, the EE/CA option #3 is the suggested plan, and that plan is to dump as much contaminated waste rock as possible into every shaft and opening they can find.

On Friday, January 8th I was at the Logan Mine, taking photos and surveying mine features. At approximately 10 am a USFS vehicle #5117 entered the site. 3 people got out and we had a brief conversation. One gentleman said he was a Soil Specialist from Prescott, the other gentleman said he was from Springerville Arizona and the woman was said to be from the USFS main office in Albuquerque, New Mexico. They told me they were surveying the Logan site for an alternate location '*repository*' to place and cap remaining waste rock. That capping of material, remaining after the shafts are full, is only found in the suggested, option #3 of the EE/CA. They told me that the work contract is set to go out in February 2021.

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The final Decision Memo/Notice that specifies the option that will ultimately be used had not yet been signed and presented to the public. It is obvious that the USFS has already made its decision to use option #3. They are moving very fast to start work, especially at the critical Logan Mine.

A separate project known as the **Abandoned Mine Closures** (Prescott National Forest) (AMC) has been created. The stated intent of this project was the closure of vertical shafts, mining cuts and tunnels (adits) at 36 inactive and abandoned mine workings. This project was officially activated with the signing of a Decision Memo on January 17, 2020 by Prescott National Forest Supervisor **Dale A Deiter**

This was an illegitimate project. Supervisor Deiter, a 30+ year employee of USFS, wrongfully and intentionally crafted this project as a mere, Categorical Exclusion (CE). This violated multiple laws and regulations required under the National Environmental Policy Act, as administered by the Council on Environmental Quality. He possessed no discretionary authority to create his own CE and violated the rules of the USFS Handbook. Compare this project to the similar *Phoenix North Abandoned Mines Lands* Project of 2010 that was created under a full and extensive Environmental Assessment. https://www.fs.usda.gov/nfs/11558/www/nepa/63850_FSPLT2_022751.pdf

By using this simple CE classification he could move quickly in an unregulated manner, sealing off mine openings and portals throughout the Prescott National Forest. This CE status allowed him to avoid all mandatory environmental evaluation requirements before conducting such mine closures. Supervisor Deiter sealed off multiple mine openings and portals at many different locations within the PNF.

One such location was the Blue Dick Mine. Here, multiple adits and shafts were closed using picks, shovels and heavy equipment. A significant soil disturbance occurred, to include allowing waste rock and other workings to tumble down into the main forest road that runs through the middle of this site. Long before I understood the dangers here, I drove on this road and walked this site many times in the past, before and after this work. I never imagined that I was entering such a dangerous, unregulated environment. No effort was made to clean up the road. No mulching and seeding, no fencing, no signage, and no road gates into the site were installed. They allowed full access for vehicles and pedestrians on this dusty dirt road. To this day, it is still open.

The Blue Dick Mine has the rare distinction of being an old **abandoned smelter site**. See 'Rock to Riches' by Charles H. Dunning pg. 350 'Origen of name unknown....Once made a crude attempt at smelting'. Old and inefficient smelters like the one that operated here are known to create significant soil contamination. Construction work, liberating fine particulates of contaminated matter at this site, without proper environmental review is an extremely dangerous and totally unacceptable act.

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This AMC project was also used within the separate, Cherry Creek Mines Superfund project. Even if the AMC project was properly adopted, no one is allowed to use a mere CE project and enter into a larger Superfund project to supplement and augment it in any way. But that is exactly what PNF Supervisor Dale Deiter did.

Adit and shaft closures were made within the CCM superfund project while it was still under review. This CCM project did not call for assistance from another project. It called out its own adit and shaft closures in its EE/CA.

Amazingly, the AMC project actually had one of the 6 CCM Superfund projects mines on its Decision Memo list. At the top of the list is, **the critically important, Logan Mine**. Here, several adits were sealed. Also, the entrance to the flooded 600 foot shaft #2 was sealed with a temporary foam plug and waste rock. In a confined pit, workers using picks and shovels moved large volumes of dusty, contaminated soil into the upper shaft area per supervisor Deiters instruction. Just like the Blue Dick Mine, a total disregard for environmentally dangerous sites and working conditions existed.

The USFS did not want to take a chance on someone finding out that this shaft was actually 600 feet deep and flooded.

This shaft has been open for some 85 years. If they were suddenly now worried about it, then why not use the safer and more expedient fence or grate option until construction started. As proposed in the EE/CA, the concrete cover will be removed. This will then provide full access to the shaft for filling with toxic waste rock.



600 foot Logan shaft #2 AZ State files 1990s' (left) My photo 12/13/2020 (right)
This shaft is shown as unplugged in photo # 207, dated 4/4/1017 in the EE/CA.

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Upon information and belief, the USFS conspired with others to have them place mining claims on several of the 6 mines of the CCM project that were not already claimed. By having the mines claimed, the USFS could avoid having this Superfund project reviewed and scrutinized by the EPA and others reviewing the *CERCLIS database and docket*. Context for this process can be found in the following link: <https://semspub.epa.gov/work/HQ/176030.pdf> An EPA memorandum on '*listing mix ownership mine and mill sites*'. To review mining claim location and ownership go to a site called *the diggings* or to the *Bureau of Land Management, LR 2000 Mining Claim System*.

Another recent project called the ***Hassayampa Landscape Restoration Project*** was signed and activated in November of 2019. I discovered that this project has been aggressively used to destroy roadways leading to abandoned mine sites and other potential sources of Critical Minerals and metals. This is being done to stop all prospecting and mining within the PNF. The process uses heavy equipment to dig a series of deep potholes and berms in roadways and throw trees and debris into that area. This is an intentional and planned obstruction of access to desperately needed natural resources.

Prescott National Forest Supervisor Dale A Deiter appears to have been sent to this highly mineralized area of Arizona with a *Mission Statement*. The timing of his appointment and his actions once here, correlate with the actions that took place in Washington related to the Critical Minerals issue. Several Executive Orders were signed. Recommendations and directives to open up Federal land for prospecting and mining were made. Mandates and recommendations were issued to use abandoned mine sites and their waste rock dumps as resources for Critical Mineral and Metals. Obviously, Supervisor Deiter could not allow this on *his* public land. It is highly unlikely he acted alone, he clearly needed guidance, and someone had to fund his projects.

This obsessive opposition to prospecting and mining on our public lands is indeed, the backdrop that created the environmental mess I have discovered and presented herein. This appears to be a deranged example of a willingness to destroy the environment, in order to save the environment.

The natural resources within our public lands belong to the people and not the employees of the Federal Government. Modern mining practices can safely extract these badly needed minerals and keep our economy and military safe and strong.

The US Department of the Interior, the US Department of Agriculture and the US Forest Service must gain control of their employees and support our Nation in this time of need. A full investigation into all actions taken under Supervisor Dale A Deiter's watch must be conducted. All culpable individuals must be held accountable for their acts.

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Federal Officials acting under color of law and outside the scope of their assigned duties may not seek the shelter of either Qualified or Sovereign Immunity. At that point, they are no better than any average citizen. Their actions are in fact the, 'Damaging of Government Property' punishable by significant fines and or imprisonment.

Notice:

For your involvement in the misconduct and improprieties contained herein I give notice to Prescott National Forest Supervisor Dale A Deiter that I, Michael W. VanWart intend to file a Civil Lawsuit against you, as an individual person and in your Official Capacity for a violation of my Constitutional Rights, Federal law Rights, General Mining Law of 1872 Rights and other Rights granted to me as a citizen of the United States and I reserve my right to modify, expand or supplement said Lawsuit as necessary to include a Joinder of Defendant Parties as warranted through Discovery.

A licensed Process Server shall present this document to Supervisor Dale A Deiter.

I am not an Attorney. I am one man working alone. There is just so much I can do. As much as I would have preferred to formally file my lawsuit and request Injunctive relief, time has simply run out. The madness known as the CCM project must be stopped.

Petition:

I oppose the Cherry Creek Mines project and demand that the US Forest Service immediately halt all actions related to it.



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